

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

IN RE:	PSAF Development Partners LP	)	
	Ward 054, Block 041, Parcel 00064	)	Shelby County
	Commercial Property	)	
	Tax Year 2002	)	

**INITIAL DECISION AND ORDER**

**Statement of the Case**

The subject property is presently valued as follows:<sup>1</sup>

<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$1,890,500	\$756,200

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on June 6, 2007 in Memphis, Tennessee. The taxpayer was represented by Fred M. Ridolphi, Jr., Esq. The assessor of property was represented by John Zelinka, Esq.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Subject property consists of a warehouse located at 4409 Summer Avenue in Memphis, Tennessee.

Subject property was originally appraised at \$2,567,300 for tax year 2002. This value was appealed to the Shelby County Board of Equalization by Caruthers and Associates ("Caruthers"). On December 13, 2002, the Shelby County Board of Equalization issued a decision reducing the appraised value to \$1,026,900. The decision indicated that the \$1,026,900 value was the recommendation of the hearing officer and the taxpayer could either accept that value or appeal the recommendation to the full Shelby County Board of Equalization. Caruthers indicated they wanted to appeal to the full board as evidenced by the bottom of Exhibit A to the taxpayer's brief.

On January 30, 2003, the Shelby County Board of Equalization issued a correction letter indicating that subject property was being valued at \$1,890,000 pursuant to the recommendation of the hearing officer. Caruthers filed an appeal with the State Board of Equalization contending the local board's decision to increase the appraised value from \$1,026,900 to \$1,890,000 is void for either of two reasons.<sup>2</sup> First, Caruthers asserted that if the local board actually reheard the matter it violated its own procedural rule that "[t]he Board may elect to rehear a property if the rehearing would be rescheduled inside the forty-

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<sup>1</sup> It is unclear from the record how the total appraised value of \$1,890,500 has been allocated between the land and improvements.

<sup>2</sup> The appeal to the State Board of Equalization was filed electronically and timely received. The appeal was effectively held in abeyance pending resolution of ongoing litigation.



five (45) days allowed a taxpayer to file to the state.” Second, the taxpayer maintained that if the change was actually made by the county board’s staff without a hearing, the action is void. See *Various Alleged Late-Filed Real Property Appeals* (Shelby Co., Tax Year 2000) (Administrative Judge, August 14, 2001).

The assessor did not take a position in this matter because it involved county board procedures rather than an assessment as such.

Assuming, without actually deciding, the State Board of Equalization even has jurisdiction in this matter, the administrative judge finds the taxpayer introduced insufficient evidence to substantiate its contentions.

Since the taxpayer is appealing from the determination of the Shelby County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

Respectfully, it is unclear what transpired before the Shelby County Board of Equalization and what relief is being sought. Absent additional evidence such as testimony from the staff of the Shelby County Board of Equalization, the administrative judge finds that the taxpayer introduced insufficient evidence to establish a prima facie case.

The administrative judge finds that the Shelby County Board of Equalization clearly issued a decision on December 13, 2002 valuing subject property at \$1,026,900 pursuant to the recommendation of the hearing officer. The administrative judge finds that Caruthers unquestionably indicated its desire to appeal that recommendation to the full Board. See Exhibit A to the taxpayer’s brief.

The administrative judge finds that it is simply unclear what transpired after this point. Caruthers alleges that a staff member of the Shelby County Board of Equalization may have improperly increased the value to \$1,890,500 without a rehearing as evidenced by Exhibit B to the taxpayer’s brief. The administrative judge finds Exhibit B seemingly indicates that the hearing officer revised his or her finding on November 26, 2002. Given a November 20, 2002 hearing date, such a scenario certainly appears plausible. Indeed, the decision dated December 13, 2002 indicates that the basis for the ruling was a “rollover” of a ruling for the previous tax year. Exhibit B shows that the line entitled “ROLLOVER BOARD OF EQUALIZATION RULING FROM PREVIOUS YEAR” was crossed out. Once again, this suggests to the administrative judge that the hearing officer was simply correcting his or her original decision. Alas, neither the hearing examiner nor anybody associated with the Shelby County Board of Equalization testified at the hearing before the administrative judge.



The administrative judge finds that things get even more confusing after this point. As previously indicated, Caruthers indicated it wanted to appeal the hearing examiner's recommended value of \$1,026,900. The appeal form to the State Board of Equalization, however, indicates that the taxpayer seeks reinstatement of the \$1,026,900 value. The taxpayer's brief indicates a value of \$463,800 is being sought. The administrative judge assumes this is a typographical error and a value of \$1,026,900 is actually being sought.

Based upon the foregoing, the administrative judge finds that the taxpayer introduced insufficient evidence to establish that (1) the Shelby County Board of Equalization improperly reheard the matter; or (2) a member of the local board's staff improperly changed the appraisal without a rehearing. Moreover, it appears to the administrative judge that the hearing officer may have simply corrected his or her decision resulting in the correction letter.

#### ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2002:

<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$1,890,500	\$756,200

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:


1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or



3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 26th day of June, 2007.

  
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MARK J. MINSKY  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Fred M. Ridolphi, Jr., Esq.  
John Zelinka, Esq.  
Mr. Jerry R. Caruthers  
Tameaka Stanton-Riley, Appeals Manager